UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, vs. KAREN L. VERNON, Defendant.	)	Case No. 3:11-cr-00028-02-RJB Anchorage, Alaska Monday, January 7, 2013 1:32 p.m. IMPOSITION OF SENTENCE

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: YVONNE LAMOUREUX
STEVE SKROCKI
JOSEPH BOTTINI
U.S. Attorney's Office
222 West 7th Avenue, #9
Anchorage, Alaska 99513
(907) 271-5071

For the Defendant: DARREL GARDNER
Federal Public Defender's Agency
601 West 5th Avenue, Suite 800
Anchorage, Alaska 99501
(907) 646-3400

For Probation: CHARLENE HENSEL
U.S. Probation Office
222 West 7th Avenue, #48
Anchorage, Alaska 99513
(907) 271-5492

APPEARANCES CONTINUED:

Court Recorder: DENALI ELMORE
U.S. District Court
222 West 7th Avenue, #229
Anchorage, Alaska 99513
(907) 677-6123

Transcription Service: TAMSCRIPTS
P.O. Box 2350
Land O Lakes, Florida 34639
(813) 428-5321

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

ANCHORAGE, ALASKA - MONDAY, JANUARY 7, 2013

(Call to Order of The Court at 1:32 p.m.)

THE CLERK: All rise. His Honor the Court, the United States District Court for the District of Alaska is now in session, the Honorable Robert J. Bryan presiding.

THE COURT: Please be seated. Good afternoon.

THE COUNSEL: Good afternoon, Your Honor.

THE COURT: This is cause number 11-28, United States vs. Karen Vernon, on for sentencing this afternoon. Ms. Vernon is present in court with her attorney, Mr. Gardner. And Ms. Lamoureux and Mr. Skrocki are here for the government. In preparation for this proceeding, I have read everything filed in regard to sentencing in this matter and also reviewed the plea agreement and the events of the trial, of course. And Ms. Vernon, have you had the opportunity to read the presentence report and sentencing recommendation?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you had the opportunity to discuss those documents with Mr. Gardner?

THE DEFENDANT: Yes, we discussed it.

THE COURT: Okay. And there are a number of objections made to the presentence report, none of which I think affect guideline applications, and -- but I want to discuss those that may be necessary. The guideline applications the probation officer found to be a total offense level of 39, less a three-level acceptance of responsibility, for a 36 net offense level, and a criminal history category of I, leaving a 188-to-235-month range. Is there any objection to the -- those guideline numbers?

MR. GARDNER: No, Your Honor.

MS. LAMOUREUX: Not on behalf of the government, Your Honor. And before we go further, I did want to raise the same matter as this morning regarding the consent to have Mr. Gardner continue --

THE COURT: Okay. Yeah, Ms. --

MS. LAMOUREUX: -- to represent Ms. Vernon.

THE COURT: -- Vernon, there was a question raised that Mr. Gardner had, since he first got involved in this, gone to work for the Public Defender's Office. Do you understand that?

THE DEFENDANT: Mm hmm (affirmative).

THE COURT: And the question was whether you objected in any way to him continuing to represent you in this matter. I believe you signed a waiver to that effect at some point. But do you have any problem with that?

THE DEFENDANT: No, I don't.

THE COURT: And you've discussed with Mr. Gardner his employment and you're satisfied that that's not a conflict that will affect your case, I take it. Is that right?

THE DEFENDANT: I hope it isn't, and I -- I would assume so, that it'd be all right.

THE COURT: And Mr. Gardner, you've discussed that with Ms. Vernon, I take it.

MR. GARDNER: Yes, Your Honor.

THE COURT: And you're satisfied there's no conflict in your work?

MR. GARDNER: Correct. I feel there's no impairment on my ability to represent Ms. Vernon in this case.

THE COURT: Okay. Now as to the contents of the presentence report, there are objections made that were listed in the addendum to the presentence report. I don't know if you want to argue those matters or if you just want me to rule on them.

MR. GARDNER: I think, Judge, you could just rule on them since they don't actually affect the guidelines.

THE COURT: Right. Well, the first one was at -- regarding paragraph 58. I'm looking at the addendum to the presentence report at page 1. The first objection was regarding paragraph 58. And just a minute. Let me -- I want to be sure I understand my own note. Oh, I think that the defendant's objection to that statement referenced in that paragraph is well taken and the challenged language should be stricken.

In paragraph 66, the next objection -- and I think that should also be stricken as a hearsay statement. In par- -- the next one was related to paragraph 73. I believe that's already been stricken in the body of the presentence report, as I understand it. The probation officer said that the inference that the Vernons offered up the cabin has been removed, but the quoted statement was not changed -- statements have not changed. And in paragraphs 115 to 118, the itemization of seized property, I think that that material should be left in the presentence report and that objection should be overruled. And I think that covers those issues.

Okay. I've read all your memoranda and I think I understand your positions, but certainly anything else you wish to add, now is the time. Ms. Lamoureux.

MS. LAMOUREUX: Thank you, Your Honor. The government will rely on the sentencing memo that it submitted at docket 147, together with the sealed supplement. I did want to address a couple of matters raised in Ms. Vernon's sentencing memo, particularly the reliance on the psychologist report, the conclusion that Ms. Vernon does not risk a -- present a or pose a risk of violence to the community. As set forth in the memo filed, it appears that the psychologist did not have all of the evidence, or any of the evidence in the case, or even the factual basis for the plea agreement that Ms. Vernon admitted during her change of plea hearing before this Court.

Obviously those statements should have been taken into account for the psychologist to be able to render an opinion on whether Ms. Vernon does present or pose a danger to the community. Those recordings of Ms. Vernon's statements herself, not just of her co-conspirators but of her own statements, demonstrate the serious nature of the offense here. She made statements regarding killing federal officials. The statements include things like, 'The judges, we need to cure their lead deficiency.' When she's examining the grenades during the weapons transaction on March 10th, when they're buying the grenades and the silencer attached to the pistol, referring to the grenades, she says, 'These will do the job.' Those are all things that the psychologist should have reviewed in determining whether Ms. Vernon poses a danger to the community.

But more importantly than her words, the actions of Ms. Vernon demonstrate the seriousness of the offense here. The Vernons had plans in -- in the works. They had the map to the Beistline's residences with the routes to those residences highlighted on them. She had given to the informant a post-it note with the addresses of the Beistline family's residences. They had talked about how they were going to execute the plan to murder those family members. They had plans in the works which were interrupted when they were arrested.

The government recognizes that up until the offenses charged, it appears that Mrs. Vernon worked hard, was a good member of society, and has since she's been incarcerated been a contributing member of the prison population. But there are a number of factors the Court takes into consideration at sentencing here and it is the seriousness of the offenses charged, as demonstrated by the victim impact statement submitted under seal, that warrants a sentence of at least 188 months. That's an appropriate sentence here at the low end of the guideline range given Mrs. Vernon's history and her age. Thank you, Your Honor.

THE COURT: Thank you, Ms. Lamoureux. Mr. Gardner.

MR. GARDNER: Thank you, Your Honor. We'll also rely on the extensive sentencing memorandum and numerous letters of support that I filed on behalf of Ms. Vernon.

THE COURT: Yes, I've read all those letters and materials from the prison, as well as everything filed.

MR. GARDNER: Great. Thank you, Your Honor.

THE COURT: Including the thing you filed today.

MR. GARDNER: Thank you. I filed them when I received them. I asked for them earlier, but -- anyway, Your Honor, it's not actually reflected in Dr. Smith's written report, but I did in fact inform him of the nature of the charges against Ms. Vernon. He understood -- I summarized for him what the plea agreement was involved and what Ms. Vernon pled to, so he actually did have a basis. He didn't view the actual evidence, but he knew very much of what she was charged with, the general facts of the case, and what her plea involved.

And I would like to point out, I think -- I think Dr. Smith's report is important, and it is a serious offense, but the Court needs to look at not only the seriousness of the offense but also Ms. Vernon as an individual. I think her five decades of lack of criminal history in her adult life, as well as the kind of person that she is, as is reflected in those many letters that she's received, indicates particularly what I think is shown at page 9 of Dr. Smith's report, which is that the current case does appear to represent a significant exception to the compliance with rules and a desire to be seen as conventional by others that characterizes her usual way of functioning.

And before that, Dr. Smith concluded that the concerns in the current case are a function of the dynamics of a long-term relationship with Lonnie. It appears extremely unlikely that Ms. Vernon would be involved in any activity beyond working to support herself in a community type setting. And I think it's -- it's very clear from I think the evidence in this case -- not to say that Ms. Vernon was not a willing participant in assisting to help her husband acquire these grenades and the silenced gun, I mean, she certainly was -- had the money when the takedown video occurred and was verbally --

I would even say enthusiastic. I mean, that's -- if you look at the video, that's what comes across.

But I would submit to the Court that -- that this is a case, if you look at the dynamic between Ms. Vernon and Mr. Vernon, they're been married 30 years, they're very different personalities, they're a very different couple. And there's a saying that, you know, you marry a personality but you end up living with a character. And I think Lonnie Vernon has exhibited his unique characteristics sufficient to the Court to see what living with him must have been like in terms of trying to maintain a marriage and a relationship, and that's what Ms. Vernon did. For 30 years, she maintained that relationship with love and devoted to her husband. And I think in the way people sometimes interact in relationships where you have a very strong personality as Mr. Vernon has shown, you either join them -- you join them or leave them kind of thing.

And I think in this case, Mrs. Vernon was -- was going along with Mr. Vernon to the point of actually -- yes, willfully and -- and participating and -- and helping and making these plans, but I think seriously in Ms. Vernon's -- in her mind, she never thought that this would actually happen, that it would go through. Plans can be made. Mr. Vernon acquired -- had lots of weapons. He had a machine gun. I mean, he -- he had lots of weapons as a lot of people in Fairbanks and in Alaska and in the country do.

But I think the real -- the crucial point is, would she have gone through with it? And secondly, would she have done -- been involved in this at all but not for Mr. Vernon? And I think -- I think the evidence is pretty clear that she wouldn't have -- have been really involved in this except for Mr. Vernon. And I think given -- given her age and her -- her -- the -- the psychological assessment that was done, a sentence substantially below the low end of the guidelines would be appropriate, Your Honor. And part of the resolution of this case with the government was, as I mentioned in my sentencing memorandum, the opportunity to give Ms. Vernon a chance to live the latter part of her life out of custody. So I'm asking for a sentence of five years.

Ms. Vernon would be almost 70 by the time she was released. She does have a strong support network, that she could live with her sister. She's got support within the community and I think that would certainly be a significant sentence for -- for her in this case. And I'd also say that I think in light of the fact that Coleman Barney -- Barney in the companion case received a sentence of approximately that amount of time. And I know he was not convicted of the most serious offense, with the conspiracy to commit murder, which Ms. Vernon was, but on the other hand Ms. Vernon has admitted responsibility, has -- is receiving credit for acceptance of responsibility in this, and I think that goes a long way towards showing her acknowledgement that in fact this was a huge and extremely serious error.

But I think the Court could -- could be assured that with Mr. -- Mr. Vernon having received the sentence that he did this morning, that the chances of anything like this happening in the future with Mrs. Vernon is practically non-existent. So thank you, Your Honor.

THE COURT: Thank you, Mr. Gardner. Ms. Vernon, if there's anything you want to say about this, I'd appreciate hearing it now.

THE DEFENDANT: Okay, yes. I wrote me some notes because it's easier for me. I would like to note on the record that I offer my sincere apology to this Court and anyone who may have felt my words and/or actions were intended to cause harm to anybody. And I apologize for having spoken or acted in such a manner that may have been construed to indicate the possibility of harm to anyone. And I also apologize to my family and friends for the shame and embarrassment this has all caused. And I mean that, sir, I truly do.

THE COURT: Ms. Vernon, I'm curious where your mind is about this whole income tax issue you had with Judge Beistline.

THE DEFENDANT: It's out of his hands, I mean, they assigned it to another -- another judge and sent appeals to appeal -- or to the Ninth Circuit. I'm doing it the lawful way, just like I had intended and been doing all along. And if -- it's up -- so it's up to that court, you know, it's up to them. And I tried to do it -- do everything the lawful way.

THE COURT: And how much of all this business -- you can't escape responsibility because this may have been your husband's idea or whatever, but how did you get pulled into this to begin with? I guess I'm asking you, why didn't you say no up front?

THE DEFENDANT: I did say no. I said no and no and no, over and over, you know, 'Don't say things, don't -- don't say things that are threatening, don't say things that somebody else will say -- think are threatening.' And I did say no, and I said no to buying the grenades. I said, 'Lonnie, we can't afford them.' I said, 'We don't need them. We don't.' I said no. And I just finally gave in. I just -- and when I was with him and sometimes my mouth overruns my thought process, as I think probably happens to a lot of people and maybe not some or whatever -- I don't know that. But I don't -- but I --

THE COURT: You --

THE DEFENDANT: -- I didn't want him -- I didn't want him to feel that -- I don't know. The guy was offering him work and I didn't want to be standing in the way and him saying, 'Well, you caused me to not get that job.' And I didn't -- and he needed work. He was out of work.

THE COURT: Who was going to give him work?

THE DEFENDANT: J.R. Olson. And it was in logging. It was something that we had done in the years past that we both loved and he was tickled to death to -- to be offered a job where he could be out in the woods even for a few months.

THE COURT: Mr. Vernon is very angry at this whole thing and remains angry about it. How do you feel about this prosecution and the court system and the whole thing?

THE DEFENDANT: I see -- I mean, I know I made a mistake. I made a mistake on who I associated with. I'm not saying my husband, no. I love him. I'm not going to deny that. He's -- I don't agree with everything he says. I disagree with a lot he says and -- and the way he says it and the way he does. I do. But I still try to get along. And I -- I know there's corruptness in the court system and I think anybody that denies it is totally blind. I mean, there's corruptness in every aspect in the world pretty near. But I -- I can't do something about it, I mean, and I don't try to do -- do something about it, I try to do things the way that's lawful, you know, and I think the way some of this was done is -- is wrong, but that's my personal opinion. It isn't something I can -- I'm just going to make a change and do anything about. I understand that. But I think I still have the right to disagree with the way some things are done.

THE COURT: Okay. Well, the -- the law tells us to look at the nature of the offense and the history of the defendant and -- and her characteristics. And let -- let me talk about that latter thing for a minute. Before this all came up, Ms. Vernon was the -- I guess the salt of the earth. You couldn't find a better person or a harder working person as far as the records in the case show and the letters indicate. And since this happened, I think her nature has come out in the substantial service she's done within the prison system to other inmates. And I think that's remarkable and it looks like what we have here is basically a good person who did a very bad thing.

And that leads to the next thing, of the seriousness of this offense. And this was a most serious offense and it was a conspiracy that was, I'm afraid, well on its way to possible conclusion with -- with horrible results. And it's -- it -- it may have been more your husband's fault than yours, Ms. Vernon, but that does not excuse you. And I guess this may be a clumsy way to say it, but in these days of women's liberation, women are expected to speak with their own voice and to do the right thing on their own and not be dragged into things that they shouldn't do because of some guy, no matter how they feel about that guy.

So it seems to me, also in light of Ms. Vernon's age, that some departure or variance, whatever you want to call it, from those guidelines is appropriate, but not a whole lot because of the seriousness of the offense. And the law speaks to us in telling us that a sentence should be sufficient but not greater than necessary to comply with the purposes of sentencing and lists the various things that the Court should consider, some of which I've already discussed. This is a situation where there are a lot of people in the community who thinks this never should have happened, that is, the prosecution should not have happened. But these things are part of our law and part of what we -- what we recognize as important to live in an ordered society so we don't hurt each other and have rules to live by that make sense.

And this -- this offense was serious and I'm not sure that it's of concern to deter Ms. Vernon from further offenses, but certainly any sentence should be sufficient to deter others from thinking that they can somehow win by doing away with -- with public officials who they disagree with. And I think Ms. -- Ms. Vernon is not likely to commit any further crimes, let alone a crime like this. But the seriousness of this event keeps -- keeps coming back.

When the smoke clears, Ms. Vernon, I think a sentence of 12 years is sufficient and not greater than necessary. I have very much in mind your age. Twelve years from when you were first arrested is going to get you to the mid 70s. I'm past that myself. There's a lot of life to be led even after such a lengthy sentence. But I think that is an appropriate sentence given the seriousness of the offense, but considering all of the other things in your life that you've -- that you've done so well.

IMPOSITION OF SENTENCE

THE COURT: So it's my judgment that your sentence should be 12 years, and that should be followed by a supervised release period of five years on the standard conditions and the special conditions set forth in the sentencing recommendation. The law requires that you pay a special assessment of $100, but it does appear to me that there are no money or assets from which any fine should be extracted, and I will waive the fine and fix no fine. Do you understand your sentence?

THE DEFENDANT: Yes. Is that 12 years from when I first was arrested, so my time --

THE COURT: Yes. You'll get --

THE DEFENDANT: -- now counts?

THE COURT: -- credit for time served thus far.

THE DEFENDANT: Okay.

THE COURT: You're looking at another 10, less good time, and I think you will be able to earn good time based on what you've already done within the prison system to be of service to others. I believe you've waived your right to appeal. On the other hand, there may be some narrow constitutional grounds upon which you could appeal your sentence. If any such constitutional grounds exist and you feel you have a right to appeal and you want to appeal, you would have to file a notice of appeal within 14 days of the day that I sign the judgment, which will be in the next day or two.

And you should know also that if you choose to file a notice of appeal and you don't have a lawyer to prosecute an appeal for you and you don't have the money to pay for a lawyer for that purpose, if you request it the court would appoint a lawyer for that purpose at public expense. And also, you should know that if you request it, the clerk would file a notice of appeal on your behalf. Do you understand all those things?

THE DEFENDANT: Okay.

THE COURT: Okay. Well, Ms. Vernon, you know, we had Mr. Vernon in court this morning. He's very angry, and I guess you understand that, and I told him that I was sorry that his life had come to this. And I'm sorry that your life has come to this, but your life is not over. And I hope you do easy time and I hope you continue to serve the other women in the prison system that you've already done a great job of helping. And, you know, you're looking at a long, hard time ahead, but it's not the end and it's something that you can live through and come out the other side and be a better person than you were during this period of time when you got yourself in all this trouble. So I wish you well.

THE DEFENDANT: Thank you.

THE COURT: All right.

MS. LAMOUREUX: Your Honor, the government moves to dismiss the remaining counts --

THE COURT: Yes, the other --

MS. LAMOUREUX: -- against Ms. Vernon in --

THE COURT: -- counts may be dismissed.

MS. LAMOUREUX: -- the indictment.

THE CLERK: All rise. This matter is now adjourned. This court is adjourned subject to call.

(Proceedings concluded at 2:02 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s/Tammie Heinrich
Tammie Heinrich, Transcriber

3/5/13
Date